SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 22 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1958

No. 198

STATE OF MINNESOTA,

Petitioner,

vs.

ROBERT MORFORD ADAMS, ET AL.,
THE ADAMS CORPORATION, ET AL.,
ADAMS HOLDING COMPANY, ET AL.,
BYRON H. COOLIDGE, ET AL.,
THE ADAMS CORPORATION, ET AL.,
ROBERT M. ADAMS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota

REPLY OF PETITIONER

MILES LORD
Attorney General
MELVIN J. PETERSON
Deputy Attorney General
VICTOR J. MICHAELSON
Special Assistant
Attorney General
SYDNEY BERDE
Special Assistant
Attorney General
102 State Capitol
Saint Paul 1, Minnesota
Counsel for Petitioner

INDEX

	Page
Argument	1
I. The Court Below Assumed the Existence of a Federal Question and Rested Its Decision on Federal Grounds	2
II. Two Separate and Distinct Federal Questions Were Presented for Decision and Decided by the Court Below Adversely to the Claim of Petitioner. The Same Questions Are Presented by the Petition in This Court	5
III. Vacant and Unoccupied Lands are *Prima Facie* in the Sovereign; in Such a Case, the Burden Is on the Adverse Claimant to Prove His Title	8
IV. The Court Below Did Not Consider the Law of the State in Deciding the Case	9
V. Petitioner Does Not Seek a Review of the Evidence	11
Conclusion	12

AUTHORITIES CITED

	Page
Cases:	
Angel v. Bullington, 330 U. S. 183	6, 10
Board of Commissioners of the County of Jackson, Kansas v. United States, 308 U. S. 343	6, 7
Borax, Ltd. v. Los Angeles, 296 U. S. 10	8
Brewer-Elliott Oil & Gas Co. v. United States, 260 U. S. 77	7, 10
Carpenter v. Shaw, 280 U. S. 363	7

Chapman & Dewey Land Co. v. Bigelow,
206 U. S. 41 4
Chicago, Milwaukee & St. P. Ry. Co. v. City of
Minneapolis, 115 Minn. 460 (1911) 10
Clearfield Trust Co. v. United States,
318 U. S. 363 ..... 5, 6, 7
Deitrick v. Greaney, 309 U. S. 190 6
D'Oench, Duhme and Co. v. Federal Deposit
Insurance Corporation, 315 U. S. 447 6
Donnelly v. United States, 228 U. S. 243 7
Economy Light & Power Co. v. United States,
256 U. S. 113 10
Fleming v. Fleming, 264 U. S. 29 7
Fort Leavenworth R. Co. v. Lowe, 114 U. S. 525 12
Garrett v. Moore-McCormack Co., Inc.,
317 U. S. 239 6
Green Bay & Miss. Canal Co. v. Patten Paper Co.,
172 U. S. 58 4
Gulley v. First National Bank In Meridian,
299 U. S. 109 4
Hardin v. Jordan, 140 U. S. 371 7
Herb v. Pitcairn, 324 U. S. 117 3
Herrick v. Churchill, 35 Minn. 318 9
In Re County Ditch No. 34, 142 Minn. 37 10
Iowa v. Rood, 187 U. S. 87 ..... 4, 8
Joy v. City of St. Louis, 201 U. S. 332 ..... 6, 9
Kansas City Southern Ry. Co. v. C. H. Albers
Commission Co., 223 U. S. 573 11
Kean v. Calumet, 190 U. S. 452 8
Lamprey v. State, 52 Minn. 181 10
Lee Wilson & Co. v. United States, 245 U. S. 24 8
Leigh v. Green, 193 U. S. 79 7

Los Angeles Farming & Milling Co. v. City of Los Angeles, 217 U. S. 217 4
Lyeth v. Hoey, 305 U. S. 188 ..... 5, 6
McGilvra v. Ross, 215 U. S. 70 8
Manhattan Life Ins. Co. of New York v. Cohen, 234 U. S. 123 4
Marshall Dental Mfg. Co. v. State of Iowa, 226 U. S. 460 8
Martin v. Waddell, 16 Pet. 367 8
Missouri ex rel. Southern Railway Co. v. Mayfield, 340 U. S. 1 ..... 5, 9
Murdock v. City of Memphis, 87 U. S. (20 Wall.) 590 3
Nelson v. De Long, 213 Minn. 425 10
Newhall v. Sanger, 92 U. S. 761 8
New York ex rel. Bryant v. Zimmerman, 278 U. S. 63 4
New York v. United States, 326 U. S. 572 7
Oklahoma v. Texas, 258 U. S. 574 ..... 7, 10
Palmer v. Hoffman, 318 U. S. 109 7
Pennoyer v. Neff, 95 U. S. 714 9
Petraborg v. Zontelli, 217 Minn. 536 10
Pollard's Lessee v. Hagan, 3 How. 212 8
Shoshone Mining Co. v. Rutter, 177 U. S. 505 6
S. R. A., Inc. v. Minnesota, 327 U. S. 558 ..... 3, 6, 7
Standard Oil Co. v. Johnson, 316 U. S. 481 3
State ex rel. Beise v. District Court, Blue Earth County, 150 Minn. 512 9
State ex rel. Burnquist v. Bollenbach, 241 Minn. 103 10
State v. Korrer, 127 Minn. 60 10
State v. Longyear Holding Co., 224 Minn. 451 10

United States v. Allegheny County, 322 U. S. 174.... 6, 11
United States v. Appalachian Power Co.,
311 U. S. 377 11
United States v. California, 332 U. S. 19.....8, 9, 11
United States v. Holt State Bank,
270 U. S. 49.....2, 3, 7, 9, 10, 11
United States v. Oregon, 295 U. S. 1..... 7
United States v. Texas, 339 U. S. 707..... 8
United States v. Utah, 283 U. S. 64..... 7
Virginia v. Imperial Coal Sales Co., Inc.,
293 U. S. 15 3
Walton v. Perkins, 28 Minn. 413 9
Wear v. Kansas, 245 U. S. 154..... 7, 8
Wilson v. Cook, 327 U. S. 474 7
Witty v. Board of County Commissioners,
76 Minn. 286 10

Articles and Texts:

Bannister, Federal Disposition of State Waters,
28 Harv. L. Rev. 270 (1915) 9
Cheatham, Goodrich, Griswold and Reese, Cases and
Materials on Conflict of Laws (1951)..... 6
Frankfurter, Distribution of Judicial Power
Between United States and State Courts,
13 Cornell L. Q. 499 (1928)..... 6
Fraser, Title to Soil Under Public Waters,
2 Minn. L. Rev. 313 (1918) 8
Robertson and Kirkham, Jurisdiction of the
Supreme Court of the United States,
§ 83 (1951) 4

IN THE

Supreme Court of the United States

October Term, 1958

No. 198

STATE OF MINNESOTA,

Petitioner,

vs.

ROBERT MORFORD ADAMS, ET AL.,
THE ADAMS CORPORATION, ET AL.,
ADAMS HOLDING COMPANY, ET AL.,
BYRON H. COOLIDGE, ET AL.
THE ADAMS CORPORATION, ET AL.,
ROBERT M. ADAMS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota

REPLY OF PETITIONER

The question presented on appeal to the court below was the sufficiency of the evidence to establish navigability under the federal law. When that question was decided against the state, the court was asked on petition for rehearing: (a) to reconsider whether it had applied to the facts found

the correct legal test of navigability as formulated by this Court; (b) to decide that federal law was not controlling and that local law should have governed the decision. The court considered and determined both of these questions against the claims of petitioner. The point is made because it appears that in their brief in opposition herein respondents have failed to perceive that both questions are preserved and presented for review.

I

The Court Below Assumed the Existence of a Federal Question and Rested Its Decision on Federal Grounds.

The ultimate issue in this case is whether the riparian owners or the state owns the beds of certain lakes and streams lying wholly within the State of Minnesota. It was stipulated that navigability would determine the question. (Pet. App. A, p. 25) The court found the waters non-navigable and "title to the beds therefore in the riparian owners * * *." (Pet. App. A, p. 25) In affirming the district court, the court below, on the authority of *United States v. Holt State Bank*, 270 U. S. 49, declared:

> "* * * Navigability, when asserted as the basis of a right arising under the Constitution of the United States, is necessarily a question of federal law to be determined according to the general rule recognized and applied in the federal courts." (Pet. App. A, p. 27)

The syllabus in part states: "Question of navigability is to be determined by Federal law." (Pet. App. A, p. 24)

In its opinion denying the petition for rehearing, the court below declared again that a federal right was asserted

and that federal law was controlling upon that right. (Pet. App. A, pp. 63-75) The court said:

> "* * * the conclusion is inescapable that what Minnesota owned in its sovereign capacity as a state upon admission to the Union and what was retained by the United States as part of the public domain clearly involves a Federal question." (Pet. App. A, p. 74)

The court then stated that:

> "Inasmuch as this court correctly applied the tests for navigability formulated by the Federal courts *in the opinion previously filed herein,* there can be no reason for granting a rehearing on the issue of applicable law." (Pet. App. A, p. 75) (Emphasis by the court.)

Part I of respondents' brief in opposition to the petition for certiorari asserts that petitioner's claim did not arise out of a federal statute or constitutional provision, that no federal question is presented, and that this Court, therefore, is without jurisdiction to review under 28 U.S.C. § 1257(3). In Part IV of their brief in opposition herein, respondents repeat the quotation from the *Holt State Bank* case, noted *supra*, in support of the proposition that the state court applied the proper test of navigability.

As it clearly appears that the court below rested its decision against petitioner solely upon the determination of a federal question, this Court has jurisdiction to review. *Murdock v. City of Memphis*, 87 U. S. (20 Wall.) 590; *Virginia v. Imperial Coal Sales Co., Inc.*, 293 U. S. 15, 16; and see *Herb v. Pitcairn*, 324 U. S. 117. Where a state court disposes of a case before it solely by the interpretation of federal law, a federal question is presented. *Standard Oil Co. v. Johnson*, 316 U. S. 481; compare *S. R. A., Inc. v. Minnesota*, 327 U. S. 558. It is unnecessary to determine

how or when a federal question was raised in a state court when it appears that the question was actually considered and decided, and that the decision was necessary to the court's disposition of the case. *Manhattan Life Ins. Co. of New York v. Cohen*, 234 U. S. 123, 134; Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, § 83 (1951). If the record as a whole shows that a claimed federal right was brought to the court's attention, the federal question is recognized as adequately presented. No particular form of words is necessary. *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 67-79; *Green Bay & Miss. Canal Co. v. Patten Paper Co.*, 172 U. S. 58, 67-68.

Iowa v. Rood, 187 U. S. 87, cited by respondents on page 6 of their brief, has nothing to do with the question of jurisdiction in the case at bar. In that case the state had specifically averred that its right to the lake bed "does not depend upon any act of Congress or any grant from the United States." Id. at 92. This Court's refusal of jurisdiction in that case was a recognition, simply, that the decision against the state in the Supreme Court of Iowa rested solely on state grounds. The case was cited later in *Los Angeles Farming & Milling Co. v. City of Los Angeles*, 217 U. S. 217, and *Chapman & Dewey Land Co. v. Bigelow*, 206 U. S. 41. Those cases support petitioner's second contention, rejected by the court below on petition for rehearing, that the ownership of submerged lands within a state is a question of state law.

Nor does respondents' reference to *Gulley v. First National Bank In Meridian*, 299 U. S. 109, cited on page 7 of their brief herein, help them. If that case is cited to show that the case at bar is not "one arising under the Constitution and laws of the United States," then the court below

deprived the state of its property by deciding on federal grounds a right which should have been decided by state law. In that event petitioner is properly here on that issue. *Missouri ex rel. Southern Railway Co. v. Mayfield,* 340 U. S. 1; cf. *Angel v. Bullington,* 330 U. S. 183, 187; *Lyeth v. Hoey,* 305 U. S. 188; *Clearfield Trust Co. v. United States,* 318 U. S. 363.

II

Two Separate and Distinct Federal Questions Were Presented for Decision and Decided by the Court Below Adversely to the Claim of Petitioner. The Same Questions Are Presented by the Petition in This Court.

In its petition for rehearing (Part II, pp. 4-11) and again in this Court (Pet. pp. 12-14) petitioner asserted that the Minnesota supreme court had misconstrued the federal common law of navigability when it held these waters non-navigable. In the opinion denying the petition for rehearing, the court asserted that it had "correctly applied the tests for navigability formulated by the Federal courts" in its first opinion, thus rejecting petitioner's request that it reconsider that issue. (Pet. App. A, p. 75) In its petition here, one of the questions presented by the state for review is whether the court below construed correctly the meaning of navigability as formulated by the Federal courts. (Pet. p. 3) It is apparent, therefore, that respondents err when they assert that the state's "petition for rehearing was based solely upon the proposition *that the court should have applied some state rule of navigability and that no federal question*

was involved." (Emphasis by Resp.) (Resp. brief in opposition herein, p. 10)

Respondents fail to differentiate between petitioner's arguments to the court below on the question of choice of law, as affected by the characterization of the issue presented, *Shoshone Mining Co. v. Rutter*, 177 U. S. 505; *Joy v. City of St. Louis*, 201 U. S. 332; *Board of Commissioners of the County of Jackson, Kansas v. United States*, 308 U. S. 343; *Clearfield Trust Co. v. United States*, supra; *Lyeth v. Hoey*, supra; and see Frankfurter, *Distribution of Judicial Power Between United States and State Courts*, 13 Cornell L. Q. 499, 515-530 (1928); Cheatham, Goodrich, Griswold, and Reese, *Cases on Conflict of Laws*, pp. 391-395, 533-536 (1951); and the kind of federal question that will permit this Court to exercise its discretionary appellate jurisdiction over decisions of the state courts.

In addition to arguing that the court below had misconstrued the federal test of navigability, the state, in its petition for rehearing, asserted that the question presented by the pleadings was determinable by state law. (Pet. for Rehearing, Part II, pp. 12-67) The court below considered and decided that question adversely to the state (Pet. Apps. A, pp. 61, 64, 74) The characterization of a question as state or federal, see, e.g., *D'Oench, Duhme and Co. v. Federal Deposit Insurance Corporation*, 315 U. S. 447, 455; *Deitrick v. Greaney*, 309 U. S. 190, 201; and the determination whether, in construing the effect of a federally created right, state or federal law will govern is itself a federal question finally determinable only by this Court. *S. R. A., Inc. v. Minnesota*, 327 U. S. 558, 564; *United States v. Allegheny County*, 322 U. S. 174, 183; cf. *Angel v. Bullington*, 330 U. S. 183, 187; *Garrett v. Moore-McCormack Co., Inc.*, 317 U. S. 239; *Palmer*

v. Hoffman, 318 U. S. 109; *Carpenter v. Shaw*, 280 U. S. 363, 367; *Clearfield Trust Co. v. United States*, supra; *Board of Commissioners of the County of Jackson, Kansas v. United States*, supra. That question, though advanced below for the first time in the petition for rehearing, was timely raised because it was actually considered and decided.[1] *Leigh v. Green*, 193 U. S. 79, 85; *Fleming v. Fleming*, 264 U. S. 29, 31. (Pet. herein, pp. 10, 11)

This Court has considered the question whether navigability for the purpose of determining the ownership of land is determinable by state or federal law in *Hardin v. Jordan*, 140 U. S. 371, 382; *Wear v. Kansas*, 245 U. S. 154, 158; *Donnelly v. United States*, 228 U. S. 243, 259-264; *Oklahoma v. Texas*, 258 U. S. 574, 594-595; *Brewer-Elliott Oil & Gas Co. v. United States*, 260 U. S. 77, 87; *United States v. Holt State Bank*, 270 U. S. 49, 55; *United States v. Utah*, 283 U. S. 64, 75; and *United States v. Oregon*, 295 U. S. 1, 26-29. Important considerations relating to the appropriate adjustments between the national and state jurisdiction over property within the states, *S. R. A., Inc. v. Minnesota, supra*, supports the need for further clarification of this question; cf. *New York v. United States*, 326 U. S. 572, 574; *Wilson v. Cook*, 327 U. S. 474.

[1] In the district court and in the court below, the state included in its brief both Minnesota cases and decisions of this Court to establish the navigable character of this watercourse.

III

Vacant and Unoccupied Lands Are *Prima Facie* in the Sovereign; Therefore, the Burden Is on the Adverse Claimant to Prove His Title.

In *United States v. Texas*, 339 U. S. 707, 716, this Court reaffirmed the constitutional right of the states to the "ownership of the shores of navigable waters and the soils under them." The jurisdiction of The Bureau of Land Management under the public land laws extends only to public land subject to sale. *Newhall v. Sanger*, 92 U. S. 761, 763. Land within a meander line is excluded from survey and constitutes a withdrawal of such area from the category of lands subject to disposal under the public land laws. *Kean v. Calumet*, 190 U. S. 452, 459-460; *Iowa v. Rood*, supra; *Lee Wilson & Co. v. United States*, 245 U. S. 24, 29. The principle which guides the classification of such areas and which placed their ownership *prima facie* in the crown and therefore in the states, *Pollard's Lessee v. Hagan*, 3 How 212; *Martin v. Waddell*, 16 Pet. 367, is their character "as land not capable of ordinary cultivation or occupation, and so * * * in the nature of unappropriated soil." *Borax, Ltd. v. Los Angeles*, 296 U. S. 10, 25; and see dissenting opinion Frankfurter, J., *United States v. California*, 332 U. S. 19, 43; see also Fraser, *Title to Soil Under Public Waters*, 2 Minn. L. Rev. 313, 325 (1918). Where a state contests a riparian owner's adverse claim to submerged lands, the state may prevail by a decision of its court that, according to its laws, the submerged lands are excluded from private ownership. *Wear v. Kansas*, 245 U. S. 154, 157; and cf. *McGilvra v. Ross*, 215 U. S. 70; *Marshall Dental Mfg. Co. v. State of Iowa*, 226 U. S. 460.

Herrick v. Churchill, 35 Minn. 318, cited by respondents (Brief herein, p. 13), involved an action between private parties. Since the state is the ultimate source of title and creates and enforces rights of property out of its sovereign power, *Pennoyer v. Neff*, 95 U. S. 714, 722; and see Reed, J., dissenting in *United States v. California,* 332 U. S. 19, 41; see also Bannister, *Federal Disposition of State Waters,* 28 Harv. L. Rev. 270, 279-285 (1915), it cannot be said that the state is without "any interest whatever in the property." *Herrick v. Churchill, supra,* at 319. If either title or possession is *prima facie* in the state, then the adverse claimants have the burden either to establish or abandon their claim. *Walton v. Perkins,* 28 Minn. 413; *State ex rel. Beise v. District Court, Blue Earth County,* 150 Minn. 512. As the land in controversy is not included in the original letters patent, whether or not such lands belong to the respondents is a matter of local law. *Joy v. City of St. Louis,* 201 U. S. 332, 342. The court below felt compelled by the decision in *United States v. Holt State Bank, supra,* to decide the case by federal law. It should be relieved of that compulsion by this Court. *Missouri ex rel. Southern Ry. Co. v. Mayfield,* 340 U. S. 1.

IV

The Court Below Did Not Consider the Law of the State in Deciding the Case.

In its first opinion the court below assumed that the basic issue in the case was whether the United States granted to the State of Minnesota, in 1858, the beds of the waters constituting the Rabbit Lake Chain. (Pet. App. A, p. 26) In the opinion denying the petition for rehearing, the court declared again that the question was whether the United States had

relinquished to the state in 1858 the beds of these waters; that this question in turn depended upon navigability of the overlying waters, as a matter of federal law. (Pet. App. A, p. 62) For purposes of res judicata, what a court decides is controlled by the issue presented for decision, not by the question that the court chooses to decide. *Angel v. Bullington, supra*, at 184. Unless this Court grants review, petitioner will be precluded by a determination that the United States did not relinquish to Minnesota these submerged lands in 1858, a question that the Minnesota supreme court did not have the power to decide. *Brewer-Elliott Oil & Gas Co. v. United States*, 260 U. S. 77, 87; *Oklahoma v. Texas*, 258 U. S. 574, 591; *Economy Light & Power Co. v. United States*, 256 U. S. 113, 123.

The Minnesota rule which denies to riparian owners the beds of waters capable of public use originated in *Lamprey v. State*, 52 Minn. 181, 198-200, and was followed in *Witty v. Board of County Commissioners*, 76 Minn. 286; *Chicago, Milwaukee & St. P. Ry. Co. v. City of Minneapolis*, 115 Minn. 460 (1911); *State v. Korrer*, 127 Minn. 60, 63; *In Re County Ditch No. 34*, 142 Minn. 37, 41; *Nelson v. De Long*, 213 Minn. 425, 431; *Petraborg v. Zontelli*, 217 Minn. 546, 552. *State ex rel. Burnquist v. Bollenbach*, 241 Minn. 103, 117-118, recognized the continued viability of the state test of public waters laid down by Mr. Justice Mitchell in *Lamprey v. State, supra*, even while holding that navigability to determine title is a question of federal law.

The court below conceded that prior to the decision of this Court in *United States v. Holt State Bank, supra*, "it was not always clear what law governed the question of navigability." (Pet. App. A, p. 62) The fact is, however, that *State v. Longyear Holding Co.*, 224 Minn. 451, is the

first case *involving the state* in which the Minnesota supreme court felt compelled to apply federal law to determine navigability and ownership of submerged land."

A public officer cannot "choose [his] own test of navigability" (Resp. brief herein, p. 16) and thereby divest the state of its property. Cf. *United States v. Allegheny County*, 322 U. S. 174, 189; *United States v. California*, 332 U. S. 19, 39. Nor did the court below "choose the federal test" and incorporate it into the common law of the state. Rather, the court felt compelled by decisions of this Court to treat the question as determinable by the test of navigability applied in the federal courts. (Pet. App. A, p. 74)

V

Petitioner Does Not Seek a Review of the Evidence.

Petitioner asserted that the court below applied to the facts found an erroneous interpretation of navigability as that term is understood in the federal courts. (Pet. pp. 12-14) Whether or not undisputed physical and evidentiary facts establish navigability as a matter of federal law, is a question that this Court will review. *United States v. Appalachian Power Co.*, 311 U. S. 377, 403; *United States v. Holt State Bank*, 270 U. S. 49, 55. And this Court has said it will review findings of fact where a conclusion of law as to a federal right and findings of fact are so intermingled that analysis of the facts is necessary in order to pass on the federal question. *Kansas City Southern Ry. Co. v. C. H. Albers Commission Co.*, 223 U. S. 573, 591.

CONCLUSION

Exclusive territorial jurisdiction, which is the constitutional right of each state, see *Ft. Leavenworth R. Co. v. Lowe*, 114 U. S. 525, permitted Justice Mitchell in *Lamprey v. State, supra*, at 199,[2] to fashion a rule of ownership of lakes fitted to Minnesota's unique geography. The people of this state now learn from their supreme court that admission to statehood on an equal footing did not carry with it that exclusive jurisdiction and sovereignty over submerged lands which is the right of the earlier formed states; that the supreme court of this state exceeded its jurisdiction in 1893 when it created a rule of navigability suited to Minnesota's special needs.

On behalf of the people of Minnesota, petitioner respectfully urges this Court to review the decision below which withdraws from our courts and legislature the right to create rules of property over submerged lands within the state. Petitioner urges, too, that this Court review the construction of federal law which resulted in a determination

[2] "Many, if not the most, of the meandered lakes of this state, are not adapted to, and probably will never be used to any great extent for, commercial navigation; but they are used—and, as population increases, and towns and cities are built up in their vicinity, will be still more used—by the people for sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural, and even city purposes, cutting ice, and other public purposes which cannot now be enumerated or even anticipated. To hand over all these lakes to private ownership, under any old or narrow test of navigability, would be a great wrong upon the public for all time, the extent of which cannot, perhaps, be now even anticipated. * * *"

that the watercourse involved herein does not meet the test of navigability formulated by this Court.

Respectfully submitted,

MILES LORD
Attorney General
MELVIN J. PETERSON
Deputy Attorney General
VICTOR J. MICHAELSON
Special Assistant
Attorney General
SYDNEY BERDE
Special Assistant
Attorney General
102 State Capitol
Saint Paul 1, Minnesota
Counsel for Petitioner